



MEC
OPINION NO.

1996.07.139

STATE OF MISSOURI

MISSOURI ETHICS COMMISSION

P.O. BOX 1254

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August 30, 1996

COPY

At the July 16, 1996 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

QUESTION: A Kansas-Missouri nonpartisan campaign committee has been formed for the purpose of supporting cultural organizations in Kansas and Missouri.

1. *This formation would make it difficult to discern which expenditures will be made to influence Missouri (Kansas) voters.*

(a) Does the establishment of a single depository account for the two committees comply with section 130.021.4(1), RSMo?

ANSWER: As your question suggests, it would probably be difficult for the Kansas committee to meet the requirements in subsection (2) of Section 130.021.10, RSMo for exemption from the "Missouri-treasurer, Missouri-account" requirements for out-of-state committees because it might spend, or be attributed with spending, more than \$5,000 in the current calendar year in support of a Missouri ballot measure. However, a Kansas committee would still not have to have a Missouri treasurer or a Missouri bank account if it received less than 20% of its contributions during the preceding 12 months from persons domiciled in Missouri during the preceding 12 months (i.e., if the Kansas committee refused to accept-or properly returned-contributions from Missouri domiciliaries in order to meet this test). In that event, the Kansas Committee would not need its own Missouri depository or its own Missouri treasurer.

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If the Kansas committee does not meet either of these tests, however, it would have to appoint a Missouri resident as its treasurer and open a single official fund depository in Missouri in order to comply with Section 130.021(1) and (4), RSMo. That depository could not be the same account that is used by a separate Missouri committee, because the latter would also need to open a "single official fund depository," and because a committee's funds are not to be commingled with the funds of any other person (which Section 130.011(22), RSMo defines to include another committee).

The two separate Missouri and Kansas committees could form a third, consolidated Missouri committee, which would then need its own separate bank account in which to deposit the contributions from its two constituent committees, if that would be convenient or appropriate in order to comply with the laws of this state and of the state of Kansas. However, the separate Kansas committee's bank depository requirements would still be governed by the provisions of Section 130.021.10, RSMo, applied as outlined above.

(b) Would the making of expenditures from this account by the treasurers of both committees comply with section 130.021.4(1), RSMo?

ANSWER: The only manner a "joint" account would be appropriate would be if a third, "consolidated" committee is created, as described above. However, unless it were located outside of Missouri but still met one of the Section 130.021.10, RSMo exemptions, its treasurer and deputy treasurer would both have to be Missouri residents.

2. The Kansas committee will be making efforts identical to and in conjunction with the Missouri committee's efforts.

(a) Is it unnecessary for the Kansas committee to file a Missouri Statement of Committee Organization, appoint a treasurer and establish an account in a depository in Missouri as a "committee domiciled outside" Missouri pursuant to section 130.021.10, RSMo?

ANSWER: See answer to 1(a) above.

(b) If the Kansas committee must satisfy the requirements of Section 130.021.10, RSMo, may it use the Missouri depository account described in section 1(a) as its depository account?

ANSWER: No. See answer to 1(a) above.

3. Since the Kansas and Missouri committees share a common goal, much of the campaign material produced by them will be identical. Consequently, it has been proposed that on all "Yes on Union Station" printed matter and broadcast advertisements one of the following sponsor identification statements would be included pursuant to section 130.031.8 and .9: "Paid for by 'Yes on Union Station', Steve Rose and Jack Craft, Treasurers" or "Paid for by 'Yes on Union Station', Jack Craft and Steve Rose, Treasurers." The committees aim to err on the side of over reporting, since proving the names of both treasurers would in fact disclose more information than is required by statute.

(a) Will the combination of funds of the Kansas and Missouri committees to sponsor the production, distribution and placement of such printed matter and advertisements comply with Chapter 130?

ANSWER: See answer to 1(a) above regarding the combination of funds. If funds are "combined" in the account of one of the two committees before payment for printed matter or advertisements, the receiving committee would have to report them as contributions received and the donating committee would have to report them as contributions made (expenditures). If each committee directly pays part of a given bill for printed matter or advertisements, then those amounts would normally have to be reported only as expenditures by that committee. If the committees "combine" their funds into a third, consolidated committee, then only that committee would, absent unusual circumstances, report those expenditures in payment of printers, publishers and distributors.

(b) Will the use of the phrase "Paid for by 'Yes on Union Station', Steve Rose and Jack Craft, Treasurers" and/or "Paid for by 'Yes on Union Station', Jack Craft and Steve Rose, Treasurers" on the committees printed matter and broadcast advertisements comply with section 130.031.8 and .9?

ANSWER: If separate committees pay for printed material covered by subsection 8 of Section 130.031, RSMo, the names of each such committee and each of their respective treasurers should be disclosed on or in the material. In your example the phrase "Paid for by 'Yes on Union Station,' Steve Rose, Treasurer and by 'Yes on Union Station,' Jack Craft, Treasurer," would be appropriate (using, of course, the official name of each committee, if they are different). Thus, advertisements should list the names of both of the committees and their respective treasurers, unless a Missouri "super-committee" is formed and the expenditures are incurred and made directly by and from it, in which event only the name and treasurer of that committee would need to be disclosed.

Federal law, which governs broadcast advertisements under Section 130.031.9, RSMo, would require the names of both committees to be included, but not the names of their treasurers.

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4. Although the vast majority of the committees' campaign advertisements will be designed and intended to influence voters in both Missouri and Kansas simultaneously, some printed matter could be tailored to influence certain voter segments within a particular county.

(a) May the funds of the Kansas and Missouri committees be combined to sponsor the production and placement of printed matter that will appear in only either Kansas or Missouri publications and comply with Chapter 130?

ANSWER: See answer to 1(a) above regarding the combination of funds.

All funds expended in support of a Missouri ballot issue would have to be handled and reported as such. Where the publication was located would be only one factor in determining whether the ad supported the Missouri issue (in whole or part). To whom the ad was addressed (directly or indirectly), whom the ad reached, and how its message was worded would be other factors to consider. The facts in each advertisement and printing situation would have to be looked at on a case-by-case basis to determine compliance with Chapter 130 requirements.

If an expenditure is made in support of the Missouri ballot issue, then by whom it is to be reported is another issue involved in compliance with Chapter 130. One variable would be whether the funds are combined before or after they are spent. If before, then either a new "super-committee" would need to be formed or else one of the two committees would have to show those receipts as contributions from the other committee (and the other report them as contributions made-expenditures). On the other hand, if each committee simply pays directly a part of a vendor's bill for an ad they mutually ordered in support of the Missouri ballot issue, then those amounts would be separately reported by them.

Your indication that all contributions and expenditures to both committees would be reported on the reports to each State regardless of which State's ballot issue may have been supported by a particular expenditure would avoid potential under-reporting problems. It is also recommended, given your desire to err on the side of reporting, that each committee file disclosure reports both with the Ethics Commission and with the appropriate local election office, even if that arguably may not be required (e.g., if a Section 130.02.10 exemption is obtained).

Finally, one other potential Chapter 130 issue should be pointed out, involving "in-kind contributions." If anyone (including another committee) makes a non-cash donation or transfer to a committee or pays a bill incurred by that committee, then the receiving committee should report it as an in-kind contribution. Thus, for example, if a Missouri domiciled committee gave an in-kind contribution to the Kansas committee, the Kansas committee would have to report it and include it in computations for its eligibility for the "under-20% Missouri contributors" exemption under subsection (1) of Section 130.021.10, RSMo.

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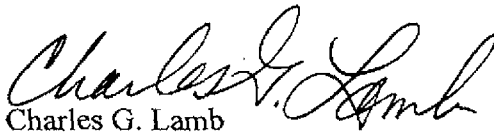
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(b) Would the use of the sponsor identification statements, described in question 3(b), on such printed matter comply with Chapter 130?

ANSWER: No. See the answer to 3(b) above.

If you have any questions, please feel free to contact this office.

Sincerely,


Charles G. Lamb
(Acting) Administrative Secretary

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NOTICE

Anyone examining this advisory opinion should be careful to note that an opinion of the Missouri Ethics Commission deals only with the specific request to which the opinion responded and only as to the law as it existed at the date of the response and cannot be relied upon for any other purpose or in any other manner.